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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Petition of US WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington, MSA	CC Docket No. 99-1 DA 99-104

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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List A B C D E

Table of Contents

Page No.

Summary i

I. INTRODUCTION 1

II. U S WEST PROPOSES TO ELIMINATE MOST REGULATORY SURVEILLANCE OF DEDICATED HIGH CAPACITY SERVICES IN THE SEATTLE AREA. 2

III. MANY VIABLE ALTERNATIVES EXIST FOR HIGH CAPACITY SERVICES IN THE MSA. 4

A. Carriers are competing to provide dedicated DS–1 and DS-3 facilities to end users 4

B. Opportunities for competitors to expand their offerings are not constrained by presently available facilities. 5

IV. THE COMMISSION SHOULD GRANT SOME OF THE FLEXIBILITY THAT U S WEST REQUESTS. 6

A. Relaxation of rules concerning tariff filing and rate averaging should help the company to compete in the Seattle MSA. 6

B. The Commission should not accept the company's requests to eliminate price regulation and implement unspecified rule changes. 8

V. CONCLUSION 11

Summary

U S West Communications is asking the Commission to forebear from regulating most of its activities in providing special access and dedicated transport for switched access services at data speeds of 1.544 Mbps and above in two counties in the Seattle, Washington Metropolitan Statistical Area. In support of its requests, U S West submits data documenting the extent of competition in providing services to end users in that area. Also, the company provides a study demonstrating that competitors have access to ample capacity to expand their activities, and that competitors may install links to the majority of U S West's high capacity subscribers with relatively modest investments. To evaluate U S West's proposals, it is necessary to balance the extent of competitive development against the fact that the company retains significant market power for these services and others throughout its extensive service area.

GSA believes there is ample reason for the Commission to grant U S West's requests with respect to tariff filing and rate averaging. Relaxation of these rules will help the company respond to requests for bids by government agencies and commercial firms. Increased flexibility for filing tariffs and deaveraging rates will increase the overall level of competition, reduce prices, and provide additional benefits to end users.

At the same time, GSA believes that it would not be beneficial to remove the limits on the maximum charges for high capacity services that exist in the existing price cap framework. As GSA has explained, actions to weaken the price cap system would remove protections that are still important for end users and competitors.

Finally, GSA explains that the Commission should not, on the basis of the Petition, relieve U S West from all rules and regulations that apply solely to the company and not its competitors. If U S West, or any other regulated carrier, wants to eliminate rules, the carrier should identify them specifically. Neither the Commission nor users of a carrier's services can rationally evaluate the impact of unspecified changes.

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COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Public Notice ("Notice') released on January 4, 1999. The Notice invites comments and replies on a Petition by U S West Communications, Inc. ("U S West") asking the Commission to forbear from regulating the company as a dominant carrier in providing certain high capacity telecommunications services in the Seattle, Washington area. U S West states that the Petition satisfies the criteria for forbearance contained in Section 10 of the Telecommunications Act of 1996 because the company lacks market power for these services in that geographical area.[1]

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state

1 Notice, para. 1, citing Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services throughout the nation. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

In the Petition, U S West asks the Commission to forbear from regulating its activities as a "dominant carrier" in the provision of high capacity services in the Seattle Metropolitan Statistical Area ("MSA"). The company demonstrates that some elements of the present regulatory framework for these services are not required to protect consumers in the MSA. In fact, the requested changes in the tariffing and pricing rules will help more competition to develop. Consequently, GSA recommends that the Commission grant some of the regulatory flexibility that U S West proposes.

II. U S WEST PROPOSES TO ELIMINATE MOST REGULATORY SURVEILLANCE OF DEDICATED HIGH CAPACITY SERVICES IN THE SEATTLE AREA.

U S West asks the Commission to forego application of regulatory controls for high capacity special access and dedicated transport for switched access services in the Seattle MSA.[2] Specifically, the company requests non–dominant status for these services provided at DS–1 (1.544 Mbps) and DS–3 (45 Mbps) data speeds. U S West is not requesting regulatory changes for other special or switched access services.

U S West engaged a consulting firm, Quality Strategies, to perform a study of the market for high capacity telecommunications services in the Seattle MSA.[3] The study performed by that firm considered the high capacity special access and dedicated transport services in two parts:[4]

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2 Petition, p. 1.

3 Quality Strategies Study, Attachment A to Petition ("Market Study"), pp. 1–3.

4 *Id.*, p. 1.

- The Provider Market for DS–1 and DS–3 circuits connecting an end user's premises to a Point of Presence ("POP") or switching center of a Competitive Access Provider ("CAP"). These circuits may be provided directly to end users, or "sold" to resellers who may "resell" them to their own subscribers.

- The Transport Market for DS–1 and DS–3 circuits between POPs, or between a POP and a central office or tandem switch.

For both of these sub–markets, U S West limits the geographical scope of its recommendations to the geographical area for which it has "irrefutable evidence" of competition.[5] Specifically, the company seeks designation of non–dominant status for high capacity services provided to other carriers or end users in King and Snohomish counties, which are included in the Seattle MSA.[6]

For the designated services and geographical area, U S West requests forbearance from five aspects of the Commission's surveillance:

- the rule that incumbent local exchange carriers ("LECs") file tariffs for interstate access services;

- requirements that dominant LECs must give 15 days notice of all tariff changes and include cost support with all tariff filings;

- the requirement that access charges must be averaged within a study area;

- the constraint that dominant carriers be subject to either price cap or rate of return regulation on all services; and

- any other rules that apply only to the company.[7]

The first four requests are specifically defined, with references to specific sections of the Commission's rules. However, the last request is very broadly framed, seeking

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5 Petition, p. 13.

6 *Id.*, p. 1.

7 Petition, p. 35.

forbearance from "any other rules that apply to U S West, but not to other carriers, in the Seattle area market for high capacity services."[8]

III. MANY VIABLE ALTERNATIVES EXIST FOR HIGH CAPACITY SERVICES IN THE MSA.

A. Carriers are competing to provide dedicated DS–1 and DS-3 facilities to end users.

The market study presented by U S West demonstrates that the Seattle high capacity market is one of the most competitive in the company's 14–state service area.[9] Three competitive access providers — MCI WorldCom, Teleport Communications Group, and Electric Lightwave — have constructed fiber facilities and installed central office switches in the Seattle MSA.[10] These carriers are competing for shares of the provider and transport markets, focusing on business customers in the financial services, health care and information transfer segments of the region's growing economy.[11]

Active competition has cut U S West's share of the market since competitors began deploying facilities in 1993.[12] For the last quarter of 1997, the most recent period for which data is available, U S West had 65 percent of the Provider Market.[13]

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8 *Id.*

9 Market Study, p. 13.

10 The Market Study references <u>four</u> competing networks, because it discusses the WorldCom network originally constructed by MFS Telecom in 1994 and acquired by WorldCom when it acquired MFS and UUNET in 1996, as distinct from the MCI network, consisting of fiber rings established in 1996. However, since the merger of MCI and WorldCom, it is now more precise to denote these as a single competing network. *Id.*, pp. 13–17.

11 Market Study, pp. 13–17.

12 *Id.*

13 *Id.*, p. 7.

This share reflected 69 percent of the DS-1 facilities and 59 percent of the DS–3 facilities to end users' premises.[14]

U S West also faces competition in the high capacity Transport Market for interoffice facilities. The company retained 74 percent of this market in the last quarter of 1997.[15] Although U S West's share of the Transport Market is still somewhat greater than its share of the Provider Market, the company expects that its role in providing interoffice facilities will decline significantly as participants in the markets merge and form competitive alliances.[16]

B. Opportunities for competitors to expand their offerings are not constrained by presently available facilities.

The potential for competition to develop can be viewed from two perspectives — the "demand side" reflecting the opportunities for end users to obtain services from a variety of suppliers, and the "supply side" reflecting the ability of competitive carriers to provide services at reasonable costs and without undue dependence on the facilities and services of incumbent firms. For the provision of dedicated services to major business users, the potential supply–side constraint on competitors is the ability to interconnect fiber networks. However, U S West explains in its Petition that network capacity limitations are not a critical constraint in the Seattle MSA.

U S West engaged a consulting firm, Power Engineers, Inc., to perform a study of network capacities and costs in the MSA.[17] The study by that organization showed that existing competitive fiber networks have more than sufficient capacity to absorb

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14 *Id.*

15 *Id.*, p. 8. The study performed for U S West did not disaggregate market shares by bit rate, and also includes DS–0 circuits (voice–grade lines) but the inclusion of these lower speed circuits has a small effect because they account for only four percent of the data market.

16 *Id.*, p. 8.

17 Seattle Cost Study and Model, Attachment B to Petition, pp. 1–3.

the current demand for U S West's high capacity service.[18] The potential constraint on competitive providers expanding service to U S West's customers is the need to build facilities to connect their sites to existing fiber backbone networks. In the Seattle MSA, however, this is not a limitation because more than 60 percent of U S West's high capacity demand (expressed in DS-1 equivalents) is located with <u>100 feet</u> of an existing competitor's network.[19]

Moreover, according to the study by Power Engineers, competitors would not be required to make unduly large investments to link with most of U S West's current customers. For example, Power Engineers explains that if competitors invested $46 million for facilities, they could establish links to all U S West high capacity subscribers located within 1,000 feet of their present network. For an investment of $110 million, this reach extends to 9,000 feet.[20] Since U S West reports that its market for high capacity services in the Seattle area is worth about $52 million annually,[21] the investments required to establish links would produce significant returns.

IV. THE COMMISSION SHOULD GRANT SOME OF THE FLEXIBILITY THAT U S WEST REQUESTS.

A. Relaxation of rules concerning tariff filing and rate averaging should help the company to compete in the Seattle MSA.

While there is abundant potential for more competition, the company's requests for reduced regulatory surveillance are too broad overall. GSA urges the Commission to grant U S West's requests with respect to tariff filing and rate averaging, but to deny the company's additional requests for regulatory flexibility.

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18 Petition, p. 5.

19 *Id.*

20 *Id.*, pp. 5-6.

21 *Id.*, p. 6.

With respect to tariffing, U S West asks the Commission to forbear from applying the rules concerning filing of tariffs and cost support for proposed tariff changes. U S West states that these filing requirements hamper its ability to respond effectively to competitive initiatives.

GSA concurs with the company's claim that relaxation of tariffing rules will help the company respond to requests for bids released by government agencies and commercial organizations. To participate effectively in competitive bidding opportunities, U S West must be able to present clear responses to requests for proposals, often very quickly. Moreover, the company must be able to submit responses with assurance that regulatory authorities will not subsequently nullify the terms of offers, or place any barriers to the performance of contracts. In addition, the company must have the flexibility to respond with commitments to provide any service, or combination of services, at rates, terms and conditions that may differ considerably from those published in its general tariffs. The only justifiable limitations on the prices, terms and conditions for contract services are that these services are not cross–subsidized by monopoly ratepayers, and that they do not impair services provided to ratepayers or otherwise conflict with the public interest.

U S West correctly points out that its competitors are not subject to tariff filing requirements.[22] Tariffing rules that apply to U S West, but not to its competitors, affect the company's flexibility in acting quickly in response to requests for proposals. Moreover, tariff requirements on U S West may reveal the company's bidding ranges and price strategies to potential competitors. In view of the competition for high capacity services in the Seattle area, GSA urges the Commission to remove the tariffing requirements for these services.

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22 *Id.*, pp. 3–7.

Increased flexibility for U S West to participate in competitive bidding for telecommunications services has many benefits. From the standpoint of a government agency inviting bids, a wider response to requests for proposals will lead to lower prices and more service options. From U S West's standpoint, the ability to participate in competitive bidding procedures will provide more opportunities for serving larger business users. Moreover, contracts benefit all U S West's ratepayers, because any services provided at prices above incremental costs make a contribution to the company's common facilities costs and overheads.

In addition to relaxing requirements concerning tariff filings, the Commission should also forbear from enforcing the rule that access charges be uniform over a study area. This regulation prevents U S West from employing access charges in the Seattle MSA different from those in any other part of Washington state. The requirement to employ broad geographical averages limits U S West's ability to respond to requests for competitive bids. In view of the competitive activity in the Seattle area, GSA urges the Commission to refrain from applying this requirement in that MSA.

B. The Commission should not accept the company's requests to eliminate price regulation and implement unspecified rule changes.

U S West also seeks relief from the Commission's requirements that it be subject to either price cap or rate of return regulation. In addition, the company recommends forbearance from application of any other rules that apply to its operations, but not to the activities of other providers in the Seattle market for high capacity services.[23]

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23 *Id.*, p. 35.

As explained previously in these Comments, GSA believes that the Commission should grant the flexibility concerning tariffs and price deaveraging. However, the company's requests for additional relaxation in regulatory surveillance should not be granted at this time.

GSA addressed the importance of price regulation in its Comments on a petition submitted to the Commission last year by the United States Telephone Association ("USTA"). In that petition, USTA requested significant relaxation of regulatory surveillance over the interstate services provided by all incumbent LECs.[24] In its Comments, GSA explained that actions to weaken the price cap system would remove protections that are still important for end users and interconnected carriers. Similarly, GSA believes that elimination of price regulation for high capacity special access and dedicated transport services in the Seattle MSA is an unnecessary step at this time.

In its Price Cap Performance Review of Local Exchange Carriers, the Commission recognized that incumbent carriers may need additional pricing flexibility — especially downward pricing flexibility — to respond effectively to competition from carriers whose activities are not regulated.[25] GSA agrees. But, while carriers may need flexibility in reducing prices, it is not necessary to exempt services from the entire price cap and earnings surveillance system that is primarily constituted to limit upward pricing actions. Indeed, if there is strong competition, as U S West suggests, the existing price regulation framework is not placing any effective restraints on the company's ability to compete. On the other hand, if U S West has overstated the

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24 In the Matter of United States Telephone Association Petition for Rulemaking — 1998 Biennial Regulatory Review, ASD 98-97, Comments of GSA, November 30, 1998, pp. 18-20.

25 In the Matter of Access Charge Reform, CC Docket No. 96-262 and Price Cap Performance Review of Local Exchange Carriers, CC Docket No. 94-1, *First Report and Order*, released May 16, 1997, paras. 32-35.

power of the competition, regulation should be continued as a protection to end users and interconnected carriers.

Finally, concerning U S West's last request, the Commission should not issue a blanket finding that the company is not required to follow policies and procedures that apply solely to its operations and not to those of its competitors. If U S West or any other regulated carrier seeks removal of certain rules and regulations, it should identify them specifically. Neither the Commission nor users of a carrier's services can rationally evaluate the impact of such unspecified changes.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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February 18, 1999

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 18th day of February, 1999, by hand delivery or postage paid to the following parties.

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